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Submitted via email to: E-OHPSCA715.EBSA@dol.gov

August 27, 2010

Office of Health Plan Standards
and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: RIN 1210-AB43

Re: Interim Final Rule Relating to Preexisting Condition Exclusion, Lifetime and Annual Limits, Rescissions and Patient Protections
Docket ID EBSA-2010-0016
RIN 1210-AB43

Ladies and Gentlemen:

These comments are submitted on behalf of the AFL-CIO and its 57 affiliated unions in response to the Interim Final Rule Relating to Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions and Patient Protections ("Rule") issued jointly by the Department of the Labor, Department of Treasury, and Department of Health and Human Services (the "Departments") on June 28, 2010.[1] Together with its community affiliate, Working America, the AFL-CIO represents more than 11 million workers. Collectively, our unions negotiate health benefits for almost 40 million workers, retirees and their family members.

The AFL-CIO, its affiliates, allied organizations and members have worked for decades to reform our health care system. We were pleased to help gain passage of the Patient Protection

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1 The Interim Final Rule is at 75 Fed. Reg. 37188 (June 28, 2010).

and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (together, the "Affordable Care Act" or "Act"), legislation that makes progress toward quality, affordable health care for all.

The Rule provides helpful guidance to unions, employers and plan sponsors in the four areas it addresses, each offering important protections to participants. These protections, or similar ones, are already provided under many collectively bargained health care plans, and, as the Act provides, they should be available to all working families.

We commend the Departments for the speedy release of the Rule, as well as the other interim final rules on the Affordable Care Act reforms that will become effective for plan years beginning on and after September 23, 2010.

As we note below, there are some areas where additional guidance or clarification from the Departments would be helpful to unions and plans as statutory reforms are implemented and modifications are made to existing benefit programs.

Lifetime and Annual Limits (29 CFR §2590.715-2711)

The provisions of the Rule on the prohibition of lifetime and annual limits offer guidance regarding the permitted "restricted annual limits" on essential benefits allowed for plan years beginning after September 23, 2010 and before January 1, 2014.[2] The three year phase-in recognizes the need for a transition period for plans that currently include annual limits and establishes ceilings at reasonable levels.

The Rule should be clarified by addressing whether dollar limits on specific benefits, rather than just an overall limit, are permitted.

We also suggest that additional guidance be provided with respect to the permissibility of visit limits or other non-monetary limits. Because the Rule, both with respect to lifetime and annual limits, refers only to "the dollar amount of benefits," it is unclear whether other limits on essential benefits are permitted or prohibited.

Rescissions (29 CFR § 2590.715-2712)

The Rule, consistent with the Act, includes a broad prohibition on rescissions and makes clear that one key aspect of rescission is its retroactive effect. But, the Rule also appropriately recognizes that the retroactive cancellation or discontinuance of coverage resulting from failure to pay required contributions is not a rescission.

It would be helpful for the Departments to clarify the effect of the Rule on actions currently permitted under existing COBRA regulations. Under those regulations, coverage may be retroactively terminated if COBRA coverage is not in fact elected or the applicable premium is not timely paid. *See* 26 CFR §54.4980B-6, Q&A-3 and §54.4980B-8, Q&A-5.

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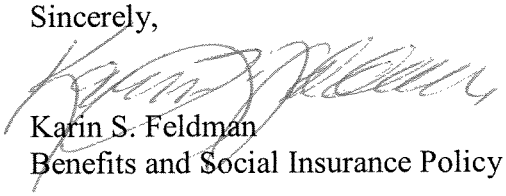
[2] Section 2711(b) of the Public Health Service Act, added by Section 1001(5) of the Affordable Care Act, authorizes the Departments to define the term "restricted annual limits."

We appreciate the opportunity to comment on the Rule and we urge the Departments to provide the clarifications suggested here in the final rule or other guidance that is issued.

Sincerely,



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